

MINUTES
KITTY HAWK TOWN COUNCIL
Monday, July 1, 2013
Kitty Hawk Town Hall, 6:00 PM

Agenda

1. Call to Order
2. Moment of Silence/Pledge of Allegiance
3. Approval of Agenda
4. Presentation:
 - Ocean Outfall Feasibility Study Report: John DeLucia, Albemarle & Associates
5. Public Comment
6. Consent Agenda:
 - a.) Approval of Minutes. May 21, 2013, June 3, 2013 and June 24, 2013
 - b.) Revenues and Expenses Report for May 2013
7. Items Removed from the Consent Agenda
8. Public Hearing:
 - a.) Zoning Amendment: Application to rezone a portion of the property at 108 Sibbern Drive from Beach Residential (BR-2) to Beach Commercial (BC-1). Presently, the property is split-zoned: a portion of the property is zoned Beach Residential (BR-2) and the remaining portion is zoned Beach Commercial (BC-1).
 - b.) Zoning Amendment: Application to rezone the property at 926 W. Kitty Hawk Road from Village Residential (VR-1) to Village Commercial (VC-2).
9. Planning:
 - a.) Site Plan Review: Application to approve a site plan proposing to expand the existing parking area at 120 E. Kitty Hawk Road. The proposed expansion would add 25 new, paved parking spaces and associated stormwater management improvements on newly acquired property to the north of the existing parking area.
 - b.) Final Subdivision: Application to subdivide an existing 6.14 acre property on the northern side of Emeline Lane into three (3) lots. No new roads are being proposed as part of the subdivision.
 - c.) Call for Public Hearing. Conditional Use Permit: Application for a conditional use permit to convert the existing office/storage space on the second floor of the existing building at 4009 N. Croatan Highway to an apartment per the standards of the Beach Commercial (BC-1) zoning district. A public hearing is requested to be scheduled for the August 5, 2013 Town Council meeting.
 - d.) Permit Fee Waiver: Request to waive permit fees for construction of a new residence to replace a residence at 1300 W. Kitty Hawk Road (corner of W. Kitty Hawk Road & Austin Cemetery Road) that was damaged during Hurricane Irene and later demolished.
10. New Business
 - a.) Appointments to Town Boards and Committees

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11. Reports or General Comments from Town Manager
 - a.) Police Chief to Serve on NCLM Police Chief's Advisory Committee
 - b.) Thank You from Outer Banks Sporting Events
 - c.) Compliment to the Public Works Department
12. Reports or General Comments from Town Attorney
 - a.) Report on Winks Arbitration Hearing
13. Reports or General Comments from Town Council
 - a.) Pelican's Perch Comments – MPT Perry
14. Public Comment
15. Adjourn

COUNCIL MEMBERS PRESENT:

Mayor Clifton Perry, Mayor Pro Tem Gary Perry, Councilman Ervin Bateman, and Councilwoman Emilie Klutz

COUNCIL MEMBERS ABSENT: Councilman Richard Reid

STAFF MEMBERS PRESENT:

Town Manager John Stockton, Town Clerk Lynn Morris, Town Attorney Steve Michael, Finance Officer Charlene Allen, Planning Director Joe Heard, Police Chief Joel Johnson, Fire Chief Lowell Spivey and Public Works Director Willie Midgett

1. CALL TO ORDER

Mayor Perry called this meeting to order at the Kitty Hawk Town Hall at 6 p.m.

2. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE

Following a moment of silence the Pledge of Allegiance was recited

3. APPROVAL OF AGENDA

Councilman Bateman made a motion to approve the agenda. MPT Perry provided a second and it passed unanimously, 4-0.

4. PRESENTATION:

- Ocean Outfall Feasibility Study Report: John DeLucia, Albemarle & Associates

John DeLucia, Albemarle & Associates: I am here to briefly let you know about the outfall study and answer any questions you may have. Council asked Albemarle and Associates to look

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into the feasibility of gravity outfall type structures in order to manage the stormwater and the floodwaters we experience between Highway 12 and US 158 pretty much from the north end of town to the south end of town. We took some information we had already gathered for the Stormwater Study done in 2012 and did some more reconnaissance. I rode many miles up and down Lindbergh Avenue trying to figure out how to break the basins into something less than seven different individual outfalls.

The town has several miles of oceanfront where the individual drainage areas that were identified in the study, the basins if you will, where stormwater will gather and flood. We all know at certain times those basins are one pretty much except for around Eckner Street which is a high spot. Looking at the land form of town, knowing the elevations of our low spots, knowing a bit more about some underground utilities ... what we have done is looked at four locations within the town and I am going to show you the first area at the north end of town. We would try to put one system north of Eckner Street that would gather and collect and convey storm and floodwater from the Eckner Street area ... Figure one. It shows the collection system along Lindbergh Avenue. Maynard Street is actually a high spot between basins two and three. I tried to look at minimizing the number of outfalls because of the expense. We could try to gather from various areas ... the Byrd Street area tends to fall toward Fonck Street and typically does not get over to Maynard Street unless we have a very severe flood in that area. This system would serve pretty much all of the north end north of Eckner Street.

The second area we looked at is areas four and five up around Wilkins Street and Historic Street to the south. We looked at trying to get those two basins together. Those two basins actually do connect with each other and we saw that after the November storm and after Hurricane Sandy. This system was planned to serve from south of Eckner Street all the way to Lillian Street where the new crossover is located.

The third outfall was actually the outfall that was proposed, designed and permitted many years ago to serve Kitty Hawk Road and also take care of Beacon and some of the flooding we see on US 158. I really do not think we can connect this system effectively all the way to the southern end of town to the Poseidon, Goosander area due to elevation differences and distances. This system, while mostly in the right-of-way, has some spurs that run off to the Sea Dunes condominiums to the south and almost to Lillian Street to the north. Going north we will have some challenges trying to ... you can see we are coming right through a site plan that is getting ready to come up tonight ... it obviously wouldn't happen that way but it would be very nice to be able to get a collection system up north through the campground up near Lillian Street.

The fourth area we had identified before was around Poseidon and Goosander. This system does not have an easement to the ocean. There are no right-of-ways for public easements that we could utilize to get to the ocean. We would have to look at obtaining easements and getting rights to private properties. The good thing about this one is we probably could come under the bypass with the system and start taking care of the Rabbit Hollow area also.

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When you look at the overall town map the outfalls are fairly evenly distributed between the areas. When we looked at the cost of these the costs are quite high. The cost ranges from about \$1.6 million to about \$2.1 million depending upon the complexity of the piping system and what we need to get through to get there. A challenge I think we are going to have is some of the underground utilities we are going to experience putting in pipes. We also have the opportunity with those pipes to do some groundwater management by using perforated pipes and such so that we do not let that water table, when it starts to rise, come up so high.

Half of the costs of these systems are between the beach road and the ocean. We have to come up with some type of a device that will keep ocean water from coming back through the system and flooding us when the tides are high. There would be some type of structure out near the oceanfront prior to the discharge out to the ocean. When we started looking at the actual costs of the outfalls there was some discussion about looking ... there are actually two components. There is a collection component of how to get the water to a point of discharge and to a point of outfall and then the second part is actually how to get the water from that point of collection out to the ocean. Nags Head, before the beach nourishment, extended some of their outfalls. Right now DOT standards are concrete piles, concrete collars and HDPE heavy duty piping and it seems to hold up under the surf conditions.

I can tell you it is not a bad way to discharge with a gravity system but there may be some others. We looked into what is going on in Myrtle Beach and in that area they are actually taking multiple outfalls and combining them together, trenching a pipe under the ocean out fifteen to eighteen hundred feet and doing a gravity discharge. It is a very expensive system costing between \$20 million and \$25 million dollars apiece. However for the cost of the outfall pipes and the known maintenance of those I would suggest we also ... if we consider going this route we should look at the potential of pumping ... putting a series of pump stations for the four of them here and actually taking it off shore maybe a thousand to fifteen hundred feet before we discharge it. In Myrtle Beach the new outfalls they are installing did that for water quality purposes and they have found the ones they have already constructed have not seen the same degree of beach notifications and closures and things like that because the discharge is further out away from the recreational zone. I am going to stop now and answer any questions you may have. That is pretty much in a nutshell what we looked at.

Bateman: Where did Myrtle Beach get their money?

DeLucia: I have no idea. In the Myrtle Beach area they will take ten, fifteen or twenty of the outfalls along a stretch and combine them together. Then they run them out in dual 52" pipes or single 74" pipes, very large pipes, and they were actually burying them into the bottom of the ocean and out letting in a safe location off shore. I mean safe out of the surf zone and out of the zone where sand would move back and forth and tend to clog them.

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Klutz: Is this is a continuous system? What we had recently asked for with the original project was just for emergency pumping. This seems to actually help us keep the water out so we don't get flooded first and then ...

DeLucia: Well, yes and no. Yes this should be considered, for the expense of these types of devices and this type of a collection system, this should be considered a permanent drainage system that will have to be maintained. When we have overwash to the extent we have seen it in some of the previous storms, with the gravity system, when the water is high and the check valve is closed to keep the water from coming back through it, there will be less likely hood for the water to get out as quickly. When the storm passes water should go away quicker. Utilizing perforated pipes and things like that to try to keep the ground water at a lower level before that happens would certainly help with the chronic storm flooding we have from rainfall. However depending on the intensity and the volume of water that comes over the dunes at any given time we still would probably expect to see some flooding. Even outfall Number two, which is the largest collection system, we have calculated between fifty and eighty hours in order to drain that basin once the storm has passed. During a storm we may still see the conditions we have seen before in some areas.

Klutz: I think I recall it was fifty feet out into the ocean for the discharge and that is at low tide? At low tide we do not have the actual ... you mentioned Myrtle Beach. When I have been there they have discharges that are back from the beach and they make big ruts in the beach and they stink. There is a whole lot wrong with those. Would that alone kind of prevent it on our beach or ...

DeLucia: It would. DOT typically looks at taking the discharge ends out fifty, sixty or seventy feet after the low tide and out. You probably would not see the piping come out of the upper beach but you would see it starting to come out closer to the ocean. Elevations on these pipes ... our low areas are about six feet where we are collecting from so the bottoms of the pipes are going to be around sea level or lower.

Klutz: So there would have to be something there to ... if it is going to be visible going into the ocean what are the safety implications of kids playing and boarding and that kind of thing?

DeLucia: I think that plays into the decision of whether you use gravity or you try to do a pump system and get the discharge out. Not on the beach and visible at all and out further into the ocean.

Klutz: With a pump system the discharge would be pumped out and you do not have to run a pipe all the way out.

DeLucia: You would have to run the pipe ...

Klutz: You were talking about a \$25 million dollar system as opposed to a pumping system.

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DeLucia: I do not think we have the volume of money to do something like that. However when you look at the cost estimate just for the control structure you have to build to keep the water from coming back into the system from the ocean and then the pipe from that control structure out fifty feet into the ocean, it is about half the cost of these systems. And while we have not looked into it closely my guess is, and my opinion is, that a pump station probably could be built for at least as much as the ... or probably not quite as much as those two elements alone ...

Klutz: And get it out farther.

DeLucia: And get it out further. It would be a smaller diameter of pipes directionally drilled to a stable location on the bottom with the discharge type. No matter what system you have there is always maintenance involved with it. The maintenance of a gravity outfall system in the surf zone where it gets beat up can be high. The maintenance of a pump system and maintaining pumps, controls, generators and things like that is also high so weighing what is the most advantageous method of getting it from the collection system back out into the ocean I think should be looked at a little closer.

Klutz: And how would they be affected by a nourishment project?

DeLucia: I am glad you asked that because the outfall structure would certainly be affected by a nourishment project. They would need to be built further out for the nourishment project which is not in these numbers right now. A directionally drilled pressurized pipe could pretty much be put at any elevation underneath the beach and probably wouldn't see daylight, if you will, under the ocean until it got out a thousand or twelve hundred feet. So you would never see that and it would not affect whatever was done with beach nourishment. It would have to be looked at to make sure it discharges out far enough not to silt up.

Bateman: Would having a beach nourishment project make it so we would not have to have the pressurized system? Wouldn't it alleviate that issue if you have sand on this side? Why would the water be able to come back in again?

DeLucia: That is a hard question to answer because of the storm events. I mean beach nourishment certainly would or should reduce the number of times we see overwash but I don't know that it will prevent us from seeing ...

Bateman: In my mind if you are going to spend \$25 million dollars spend it on beach nourishment rather than spending \$3 million dollars on doing an outfall.

DeLucia: We would not suggest we do anything like Myrtle Beach ...

MPT Perry: We need to clarify a couple of things. The town is basically looking at three different options. One of those has been engineered with a recommendation that includes stand pipes and sumps and that sort of thing. The other option is looking at beach nourishment,

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pumping sand on the beach but if you do it like Nags Head and not build a dune and only widen the beach you will still get storm events with a storm surge coming over. With rainfall, everything between the highways is lower than either the ocean side or the west side and you still have the issue of flooding so an outfall serves a purpose even with beach nourishment. Let's make sure we are clear on that.

I am going to ask you to pull up outfall Number three. I have a question for John and then for Willie before I proceed further with a recommendation. John, we are in the process of looking at a municipal service district hearing for the fall is that correct?

Stockton: That is correct.

MPT Perry: That will pursue the beach nourishment aspect and give us an idea of whether people want to spend the money for it. It is going to be very expensive and we would have to incur debt. We would have to incur a cost share and then ask the county for a bunch of money but we are pursuing that and it will go further down the line in the fall.

Willie, during superstorm Sandy we had to pump and we have actually pumped since then two more times. We put a sump in at Byrd Street right?

Midgett: Correct.

MPT Perry: How did that work? With no stand pipe or anything how did the sump work?

Midgett: Once the water was down enough to where we could actually get the pump in there it worked great.

MPT Perry: If we pursue the already engineered aspect of putting a stand pipe and sump system in just to see how well it would work and stand up, where best after superstorm Sandy would it go?

Midgett: The deepest area we have was the Hawks Street area which encompassed Wilkins down toward Balchen. Usually it does not go much south of Hawks but it is definitely the deepest area.

MPT Perry: Okay and that would have been hard to get to if you put just a sump. You could not have gotten to it.

Midgett: Yes.

MPT Perry: Would a stand pipe have stood up against all the gravel and all the over wash that came over if a stand pipe had been put in there in accordance with the engineered plans that Albemarle has presented to us. Would that have stood the storm?

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Midgett: They would have been covered up I think. We could have uncovered them but when the State came in and cleaned the road who knows how many of them they would have hit.

MPT Perry: So we would still have problems.

Midgett: Yes sir.

MPT Perry: Okay. If we want to pursue at least one of those then Hawks Street would be the place to do it.

Midgett: More than likely yes sir. That's the largest volume of water.

MPT Perry: All right. Thank you. Now my fellow council I have a recommendation. We are pursuing the beach nourishment and it is on track. I think we ought to look at a stand pipe system, as already engineered, in the Hawks Street area just to see how it would work. And I think we should direct the manager to pursue this outfall with NCDOT because NCDOT is heavily invested in it and see if they can come up with some money somehow help us. We are moving in three directions by doing this. If NCDOT does not help we are done. If they say yes we should be able to help you because that affects NC 12 and US 158 not just from rainwater but we now know 158 flooded in two or three different storms for weeks at a time. NCDOT has a real vested interest in this section and if they are going to help us this is the place to do it. That will give us three tracks of where we can do something while we don't have any money to do any of it.

Bateman: I agree with that.

Mayor Perry: One question. You know you were talking about the stand pipe that could possibly be covered up and our reason for going under NC 12 was to stop from having to close it. What if we put the stand pipe, on a trial basis ... stop it before you got to NC 12 so you could set up and pump across and not have to worry about the ocean tearing it up. It is just a thought. We could always, if we want to later, go under NC 12 and hopefully DOT would put pipes under the road. I believe that would be to their advantage but we could do it without going under NC 12 to start.

MPT Perry: I don't have a problem with that at all.

Mayor Perry: Willie would it be better in your opinion to try that first?

MPT Perry: We could not have gotten to NC 12 anyway until they cleared it off.

Midgett: In the Hawks Street area near the intersection of 12 there is an area where we could stub it up on the west side of the road. On that side the shoulder is fairly narrow on the ocean side of Hawks Street. That would possibly benefit us.

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Mayor Perry: Instead of going under NC 12 because at this point we are still going to be closing the road to pump at other places. But that would give us an idea of how the sumps worked. And because our concern is after the storm if we had them on the east side of NC 12 we may have gotten them torn up to start with.

MPT Perry: I think they would have been and that is why I asked the question.

Mayor Perry: If we did that then all we would ever have to do to is go under NC 12 and put them over there if we did beach nourishment.

MPT Perry: Sounds good to me. Do you have a sense of direction?

Stockton: Yes sir I certainly do.

MPT Perry: Council has a consensus?

Bateman & Klutz: I agree.

MPT Perry: Go ahead John. You are going to tell me why none of this works?

DeLucia: I am thinking it will work just fine. I would just like to reserve the right to look at what side of the road might be best. I understand your concern about it being torn up but there are some other considerations I have given to the system that might be advantageous to have it on the other side.

MPT Perry: Okay John. The manager will listen to you. Bring us whatever we need to know.

Stockton: We will.

Bateman: After Hurricane Isabel didn't DOT go along the east side of Highway 12 and put a steel bulkhead by Hawks Street?

Mayor Perry: They did but they had to remove it.

DeLucia: And they put sandbags back in some of those areas.

Mayor Perry: CAMA made them remove the steel pilings after they put them down.

DeLucia: We ran into some of the sandbags around Lillian Street.

Mayor Perry: We would not have lost the road this time if it had been there.

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Bateman: Making them remove the pilings was crazy.

Mayor Perry: That is your government at work. Next is public comment.

5. PUBLIC COMMENT:

1. Jim Shipley, 906 B West Kitty Hawk Road, Kitty Hawk, NC: Good evening. I would like to take just a second and talk to you about a subject you are going to be dealing with a little later, item 9(a). All of us here have probably visited Hurricane Mo's Restaurant at one time or another and we see how incredible the parking can be. I am there a couple of times a week myself and along with people who are parking to go to the beach it is not just incredible but dangerous. We have people coming in at funny little angles right up to the edge of the street. I have seen numerous near accidents from people backing out and trying turn in. I think that should be something that is sincerely considered when you discuss their application for the improved parking they want.

6. CONSENT AGENDA:

a.) Approval of Minutes. May 21, 2013, June 3, 2013 and June 24, 2013. *(An affirmative vote for the consent agenda will approve these minutes.)*

b.) Revenues and Expenses Report for May 2013. *(An affirmative vote for the consent agenda will acknowledge this report.)*

MPT Perry made a motion to approve the consent agenda as promulgated. Councilwoman Klutz seconded and it passed unanimously, 4-0.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items removed.

8. PUBLIC HEARING:

MPT Perry "so moved" to go into public hearing. Councilman Bateman seconded and it passed unanimously.

a.) Zoning Amendment: Application to rezone a portion of the property at 108 Sibbern Drive from Beach Residential (BR-2) to Beach Commercial (BC-1). Presently, the property is split-zoned: a portion of the property is zoned Beach Residential (BR-2) and the remaining portion is zoned Beach Commercial (BC-1).

Heard: This first item is a proposal to rezone a portion of the property at 108 West Sibbern Drive from Beach Residential, BR-2, to Beach Commercial, BC-1. On the site plan you will see

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a red dashed line running through the property. It is referred to by Dare County as a single parcel and has one property number but it is actually two separate parcels. The area to the east contains the first building. The eastern most building is within the commercial zone BC-1 and the entirety of the second tract that contains the other building on the property is zoned BR-2.

The applicant is requesting the entire property be amended to BC-1. The property is about an acre and a half in size and there are two buildings on the property. The first one is from 1982 and the second one from 1984. Both were built in association with a day care center that operated until 2011. The property has been vacant since that time and has been purchased recently by a new owner. There is only frontage on Sibbern Drive at this point in time and it is a town maintained street.

The two adjoining properties to the east of the subject property, highlighted in red, are zoned Beach Commercial One and includes Seto's and Kitty Hawk Carpet and Furnishings. Looking at the other areas along Sibbern is the Dare County water tank and across Jejac Street, just for reference, is Henry's Restaurant. The two parcels adjacent to the north are zoned BR-2. One of the parcels fronts W. Tateway Road and contains a duplex while the other fronts on Sunrise View Court and contains a single family residence. The large, abutting property to the west and south is approximately 8.15 acres in size, is zoned BR-2 and presently undeveloped.

In the past, almost exactly a year ago to the day, there was an application that council heard for a similar rezoning request. You may recall the request was associated with two other applications all of which related to the establishment of a dog grooming and boarding facility on the property. The council had concerns with that proposed use and at the meeting on July 2nd of last year council voted to deny the proposed rezoning.

At this point there is a different owner and it is a different type of proposal for the council to consider. The applicant, at least for the time being, is looking at the possibility of locating a T-shirt facility, a kind of manufacturing and wholesale use for the front building in the portion that is zoned commercially. It will be in a portion of the building because they cannot use the whole building because there is not enough commercial property to accommodate that. The applicant is looking at using the rear building for the time being for a residential use and it is in the residential zone. Both of those, at least for the short term, are uses that are proposed and are consistent with the current zoning. However the applicant has expressed an interest in having the flexibility to use these buildings, which were built and designed as commercial buildings, for commercial purposes in the future.

In evaluating the layout of the property and how it functions I want to point out again the commercial line runs through the property. While the front building is entirely within the commercial zone the issue faced by anybody looking to use that building for a commercial purpose is there is not enough remaining property to accommodate something like parking spaces. It really doesn't function in a manner that anybody could operate a business using that entire building. With what is being proposed they can make it work but to use the whole building

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there is almost no way for it to be used unless it was a use that had very minimal parking requirements.

Again, this was built for a commercial purpose, it is a non-conforming use and grandfathered but now it would not be able to be used for commercial purposes under the present zoning. I do want to point out the challenge faced by the owner in looking at these properties in the future.

The town's adopted CAMA Land Use Plan designates this property as a commercial, shopping and working area so the proposed request is consistent with that designation. Finally, I just want to mention at their meeting on May 16th the planning board evaluated this proposal and voted unanimously to recommend approval to rezone the remaining portion of 108 West Sibbern Drive from BR-2 to BC-1. I will certainly be glad to answer any questions that the councilmembers at this time.

MPT Perry: A point of perhaps clarification in this particular request for rezoning. Every adjacent property owner has submitted a letter of approval. Is that what I read in my packet?

Heard: You have letters of support from the owner of the DeLoatch property that adjoins the west and south side of the property. The other letters are from businesses that are in very close proximity to this but none of those directly about this property. We do not have letters from either of the residential or the commercial uses that about it but there is one from Henry's, Bissell Engineering and one from Outer Banks T's. All of which are in close proximity.

MPT Perry: At the last request for rezoning as I recall nobody from the town spoke but we did have people across the Kill Devil Hills line speak in opposition. This time we have people from Kitty Hawk and Kill Devil Hills in support of this rezoning. Just want to make sure we are clear on that. Thank you.

Klutz: Joe did I hear you say the future Land Use Plan shows this area as developed commercially because there are some comments in the previous one we had with this property that it was not. The future Land Use Plan stated it was for residential development. The plan generally encourages rezoning applications and was inconsistent with the stated goals, policies and intent of the Land Use Plan. And it said the plan generally encourages the character of low to medium density so it was not the Land Use Map it was just some of the generic type statements that are in the Land Use Plan not with the map. It was not consistent with the map ...

Heard: That is correct. The map has always shown this very specifically ... but when the council evaluated and was coming to a decision council looked at some of the other general statements in the plan and opted not to approve it at that time.

Klutz: My recollection of the folks from Kill Devil Hills who lived in the residential area is they did not really object to a commercial zoning they were objecting to the dog use because of the noise and some of the other things. I remember asking specifically what do you think about the

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zoning and I am not sure I got a straight answer but I recall just about everything they said about it was directed, probably misdirected because we were discussing the zoning, but it was directed at the use not at the zoning itself.

Mayor Perry: Any more questions? Do we have anybody signed up to speak at this portion of public hearing?

Morris: No one has signed up.

Mayor Perry: Does anyone wish to speak to this portion of the public hearing?

1. Charlotte Walker, 3409 Virginia Dare Trail, Kitty Hawk, NC: This is my son Joseph and we own the property now and I promise you I will not have a dog park there. I can promise you that and it would help us clarify a lot of things if it could all be one zone.

Mayor Perry: Anybody else? Let the record show no one else came forward.

b.) Zoning Amendment: Application to rezone the property at 926 W. Kitty Hawk Road from Village Residential (VR-1) to Village Commercial (VC-2).

Heard: The second item we have is a proposal to rezone a property at 926 West Kitty Hawk Road from Village Residential to Village Commercial, VC-2. In this case what we have, again outlined in the red on this property, is a property almost 2.9 acres in size presently zoned Village Residential which shows up as yellow on the map. You will see a variety of different districts in this area of the village and I would like to talk a little about what surrounds this property. The planning board had a lot of discussion about this in making their recommendation.

The property is presently undeveloped and is surrounded on three sides almost entirely by water. There are some creeks that run down and end up going under the road and across the street. The property has a fairly minimal frontage on Kitty Hawk Road and mature landscaping covers almost the entire perimeter of the property. It is almost like it has a built in buffer in a manner of speaking and the main central part of the property is cleared.

Looking around is Mr. Shipley's property, a larger property is the Kitty Hawk Park, adjoining the property on the other side in a Village Commercial Three district is all the RPC Construction complex. There is a great variety of quasi industrial type uses located on that property. There is a thinner property that contains the Northeastern Marine Construction business that is zoned Village Commercial Two. The Village Commercial Two district also extends directly across Kitty Hawk Road and includes properties such as Stormont Construction and Cozy Kitchens. There is another property zoned residential and contains a barnlike storage building but not a residence. From the letters submitted by the applicant he has stated his intent is to construct a barn on this property and operate his landscaping business and he would use this property as the base for that business.

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In looking at the future Land Use Map and the town's Land Use Plan for this property, the map does designate the property as a lower density residential area. As the planning board evaluated that recommendation they noted there were several other policies and objectives in the plan and felt the amendment was consistent with those objectives and the intent of the town's adopted Land Use Plan although the map shows a different zone. As part of its recommendation on May 16th the planning board voted unanimously to recommend approval to the town council of the proposal to rezone this property.

Mayor Perry: Any questions? Has anybody signed up to speak to this portion of the public hearing?

1. Jim Shipley, 906 B West Kitty Hawk Road, Kitty Hawk, NC: You can see from the map that one corner of my property touches this. A while back I was driving down the road and I counted out of six adjacent pieces of property four of them were businesses. I did not look any further than that and I certainly do not have an objection. As a person he is a hardworking, upstanding young man and I think he needs a place to put his equipment. Thank you.

2. Dave Stormont: Good evening. I own property directly across the street from 926. I own 929 and 931 and I have absolutely no objection to this amendment passing.

3. Rod Perry, 81 South Dogwood Trail, Southern Shores, NC: Council thank you for your time. I am Mark Perry's father and I want to very briefly speak in favor of the request to rezone it simply because all the uses around him are non-residential. It is really not the highest and best use of that land to have it residential and I cannot imagine anything that would be done on the property that would bring negative impacts to any of the neighbors or the town so I would ask for your support of it. Thank you.

4. Wade Tillett, 4016 Poor Ridge Road, Kitty Hawk, NC: My name is Wade Tillett and I was born and raised in Kitty Hawk, grandson of Rad. I would like to see this commercial. As everybody has been saying it is surrounded by swamps, marshes and commercial property and the fella that is doing it is a really good hearted guy. I think he would respect the wishes of everybody.

5. Dylan Tillett, 4012 Poor Ridge Road, Kitty Hawk, NC: My name is Dylan Tillett, grandson of Rad as well. Mark is a great guy and all of my points have been said. I would like to stress the fact there are buffers along Kitty Hawk Road and with all the surrounding commercial property I do not see why this place was not commercial to begin with. I am in favor of the rezoning.

6. Cliff Neal: My name is Cliff Neal and I live next door to Dave Stormont which is also across the street from this property. I think it is wonderful you would rezone it if that is the decision because it complements the area. And having a landscaping business right across

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the street I won't have to go so far for mulch. The considerations this council has always paid to the people that work hard and want to make something of their lives right here in the village makes it a wonderful place to live. I have been rewarded by the decisions of this council on many occasions and I certainly hope they will go according to the wishes of Mark Perry. I am all for it. Thank you.

7. Cathy Monroe: I am a next door neighbor of Cliff's and I have known Mark since he was very little. I feel like having a landscaping business would be an asset.

Mayor Perry: Anybody else? Let the record show no one else came forward and may I have a motion to go into regular session.

Councilman Bateman "so moved" to go into regular session. MPT Perry seconded and the vote was unanimous, 4-0.

8. (a) Mayor Perry: Returning to (a) what does council desire to do?

Councilman Bateman moved to grant approval of the application to rezone the remaining portion of the property at 108 West Sibbern Drive from Beach Residential, BR-2, to Beach Commercial, BC-1. The town council finds that rezoning the subject property is consistent with the property's designation as a commercial, shopping and working area on the future Land Use Map in Kitty Hawk's adopted Land Use Plan. Councilwoman Klutz seconded.

MPT Perry: A question I have for the attorney is do we need to add the reasons to the motion?

Michael: You may add any or all of them.

MPT Perry: Would you mind if we added these to the motion?

Bateman: No problem.

MPT Perry: There is one I want to make sure we add and that is an adjacent property owner and nearby businesses have stated no objections to the rezoning. At the last requested rezoning there were residents from Kill Devil Hills that objected. In addition, the proposed rezoning of the subject property is consistent with the designation as a commercial, shopping and working area in Kitty Hawk's adopted Land Use Plan. The subject property abuts several properties that are zoned commercially and contain active commercial uses. The proposed rezoning is consistent with the historical use of the property as it was used as a day care center for 29 years. The commercial use of the subject property predates any of the surrounding residential development. With two large, commercial buildings on site, the subject property has limited potential to be redeveloped for the type of residential uses permitted in the BR-2 zoning district and continued

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commercial use or commercial redevelopment of the subject property would benefit the tax base of the town. Vote was unanimous, 4-0.

8. (b) Councilwoman Klutz moved to grant approval of the application to rezone the property at 926 West Kitty Hawk Road from Village Residential One to Village Commercial Two. Although inconsistent with the future Land Use Map and Kitty Hawk's adopted Land Use Plan the town council finds the proposed rezoning is consistent with some of the stated objectives and intent of the plan. Although inconsistent with the future Land Use Map in Kitty Hawk's adopted Land Use Plan the proposed rezoning is consistent with the intent of the plan to encourage future commercial development in existing commercial areas. The subject property adjoins several other properties that are zoned commercially and contain more intensive commercial uses. Due to the close proximity of intense commercial uses, the subject property has limited potential to be developed for the type of residential uses permitted in the VR-1 zoning district. The subject property seems better suited for commercial, rather than residential, development. Due to its relatively secluded location and existing trees and vegetation around the edges of the property, commercial development of the subject property would not have significant impact on the surrounding properties. Councilman Bateman seconded.

MPT Perry: I want to add a comment. This property has more than just buffer trees. It almost has a moat except for the driveway. It is ditched all the way around. Folks this is kind of an example of how Kitty Hawk has grown over the years. A spot here was rezoned to take care of something and then something was left out ... we are kind of completing the circle but it has taken a hundred or so years to get there.

Mayor Perry: When this came up I was amazed it wasn't already zoned that way. The property in front of it is already commercial and I thought it was but after research I found out it wasn't. I certainly support this.

Vote was unanimous, 4-0.

9. PLANNING:

a.) Site Plan Review: Application to approve a site plan proposing to expand the existing parking area at 120 E. Kitty Hawk Road. The proposed expansion would add 25 new, paved parking spaces and associated stormwater management improvements on newly acquired property to the north of the existing parking area.

Heard: The proposal you have before you is a site plan to expand the existing parking area at Hurricane Mo's at 120 East Kitty Hawk Road. The proposed expansion would add 25 new paved parking spaces on newly acquired property to the north of the existing parking area of the restaurant. The proposed parking area consists of a 22 foot wide access drive aisle going in with a row of parking on either side with a turnaround area at the end. There is no expansion of the

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existing business or the buildings associated with this project. It is purely to expand the amount of parking on site.

In talking with the owners, their initial goal was to improve the septic system. As they looked into it they were able to complete a property swap with the Humphries property to the west on the corner of Kitty Hawk Road and Highway 158. They acquired a piece at the rear of the property and they traded off a triangle that gave the other property greater road frontage on Kitty Hawk Road.

Part of the additional property would include stormwater improvements associated and required for the new parking area. The property now, with the new acquisition, is a little over 1.2 acres and is all zoned Beach Commercial One as is all of the property directly around it. Even the property to the east that contains some residential uses is zoned Beach Commercial One although it is used residentially. The restaurant presently is almost 3200 square feet in size.

I would like to point out for the councilmembers who went and visited the site, or have driven by, there is active work going on. That is not the applicant jumping the gun. They have an erosion and sediment control permit to begin installation of the septic system which is a very high priority project for them. If council decides to approve the additional parking it would also be a part of the grading and included in the permit.

The subject property presently contains 26 parking spaces. The town standards today are 32 parking spaces. They are non-conforming and do not have enough parking to meet the present town minimum requirements. This proposal would add 25 spaces. They would lose 3 parking spaces in order to provide the access into the new parking. Once this project is completed, should it be approved, there would be a total of 48 parking spaces on site and would bring the property well into compliance with the minimum standards. There are also two ADA handicapped accessible spaces located near the entrance. With the additional amount of parking it would not be enough to kick in a requirement for a third space.

The main thing the planning board discussed, as well as the consulting engineer working on behalf of the town, and the engineer for the project, Coastal Engineering, had to do with stormwater management. With the creation of the new impervious surface for the 25 parking spaces they have to address all of the new stormwater runoff that is created by those spaces. They do not have to address all of the stormwater requirements for the whole basin where we have flooding from time to time and they do not have to address any existing stormwater. I do not believe there is really any stormwater management built into this property presently but they are not required to address that. They are only required to address this new addition and accommodating it.

As you read through the staff report you will notice comments from the town's engineer and the applicant submitting a revision to address those. The most recent iteration of that is on the 27th. That was towards the end of last week and the town received a revised copy of the site plan. That

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is the plan before you but there was not enough time to review comments from our consulting engineer with Anlauf Engineering in time to put that in your packets. I put a letter in front of you this evening before the meeting that has the revised comments. The key thing I want to mention is in the letter it appears our consulting engineer agrees that the revised plan addresses all of his previous comments where he found several factors to not be in compliance with the town's stormwater management regulations. He has now changed his comments to say it is in compliance or compliance with the intent I believe is one of the comments. The most significant change was bringing up the bottom of this stormwater basin. Before it was down only 6 inches above the water table and Coastal Engineering was able to redesign this basin in a manner where they were able to bring it up to 12 inches which then meets the minimum requirements for this area of the State and the town's ordinances. That was really the key to this redesign and the applicant did add a couple of other notes on the plan to address other concerns. I want to bring that to council's attention because it is a change from what is in your staff report.

The planning board reviewed this application at their meeting on June 13th and voted unanimously to recommend approval of this site plan for the expansion of the parking area at Hurricane Mo's. I will be glad to answer any questions the councilmembers have.

Hearing no questions or comments, **MPT Perry made a motion to grant approval of this site plan for the expansion of the parking area for Hurricane Mo's Restaurant at 120 East Kitty Hawk Road. Councilman Bateman seconded.** Mayor Perry commented it is very much needed and other councilmembers commented they were glad it was explained what the activity on site was about. **The motion passed unanimously, 4--0.**

b.) Final Subdivision: Application to subdivide an existing 6.14 acre property on the northern side of Emeline Lane into three (3) lots. No new roads are being proposed as part of the subdivision.

Heard: This is an application for approval of a final subdivision plat that proposes to divide an existing 6.14 acre property on the northern side of Emeline Lane into 3 lots. There are no utility improvements necessary as part of this and that is why you are seeing this as a final plat. There is really no need to do a preliminary plat. The purpose of a preliminary plat is to approve a design and then the applicant installs all of the improvements.

The property is zoned Village Commercial, VC-2, which allows single family residential development. Also important to point out is it does permit a variety of other types of commercial activity should the owners look to do that in the future. The property presently contains a single family residence. On the plat it is Lot 3 and the improvements, the driveway and other similar improvements such as the parking area are located in this area. Those are accessed by a driveway that comes in off of Emeline Lane all the way down on the eastern most part and winds up and around. One of the things you will note is a lot of high ground. As you are looking at the areas where someone would be likely to build a residence on any of these properties it is more than likely going to be back in this area.

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The applicant is not seeking and does not need to do any improvements to the road for frontage and all of these properties will have an easement that is shown on the plat to use the existing driveway. There would not even be an additional curb cut in this case. You can see how the concept would probably work quite well because there is an extensive amount of wetlands and in order for somebody to cut a new driveway it would require an enormous amount of expense and significant permitting costs and time with the Army Corps of Engineers. More than likely they would be glad to work within this easement to gain their access back to the high ground.

Lot 1 is 2.86 acres, Lot 2 is 2.22 and Lot 3 is just a shade under an acre at .96. You will notice those figures don't match the exact figures on the plat because according to the town's ordinance we factor out any CAMA wetlands. Those are not counted toward the lot area. There are a few little CAMA wetlands on the sides of a couple of the lots. The applicant, in designing this, did a good job of incorporating enough area within each property that even if we did not count the wetlands at all each lot still has over 16,000 square feet of high ground in one area. In other words these are larger than your typical building lot which is a minimum of 15,000 square feet.

The only quirky thing I want to point out occurs on Lot 2. There is a little over 75 feet at the front of the lot along Emeline Lane that is carried back nearly 400 feet and then as it bends to the west it narrows to a width of 50 feet. Then as you get into the buildable area it widens again to a width of actually over a 150 feet in the area where you would see the buildings.

If and when these lots are approved and developed each would need a septic permit from the Dare County Environmental Health Department. There is an existing waterline on Emeline Lane that could be tapped into and there are already overhead electrical lines in place to the existing residence that could easily be tapped into for electrical service. I mentioned the easement for the drive is 45 feet in width and it encompasses the drive all the way down the eastern boundary. As it goes to the north it narrows to 30 feet and then narrows to 20 feet as it crosses over Lot 2 and connects to Lot 3 in this area but it does encompass all of the existing drive.

There is also a utility easement in the notes on the plat. It is 10 feet in width on the front of the properties along Emeline and 5 feet in width on each side property line for these lots. So there are accommodations made for the future, if needed, to have those easements in place for utilities.

The planning board reviewed this plat at its meeting on June 13th and voted unanimously to recommend approval of the final plat. There were 3 comments the board made about items they would like to see corrected on the plat and the applicant submitted a revised plat on June 17th that had all of those points addressed. Staff is comfortable all of the comments have been addressed by this revised plat. That is all I have for you and would be glad to answer any questions if you have any.

MPT Perry: The easement road is a private road and privately maintained.

Heard: That is correct. We do not even consider it a road. It is actually a driveway.

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MPT Perry: In the future would the town have to take that over if requested because this is now a 3 part subdivision.

Heard: No sir. It does not comply with any town standards. When we are looking at a subdivision we require each lot to have an appropriate amount of width and frontage should a person wish to develop their own driveway. In this case they are using this driveway but it is not a road that the town would have to accept.

MPT Perry: That is where I was going. Just wanted to make sure the town doesn't have to accept it. I mean it has been there and it is well maintained but sometimes ownership changes and that can change too. I do not have any other questions.

Councilman Bateman moved to approve the final plat for Madeline's Hen House LLC Subdivision that divides an existing 6.14 acre property on Emeline Land into 3 lots. Councilwoman Klutz provided a second and it passed unanimously.

c.) Call for Public Hearing. Conditional Use Permit: Application for a conditional use permit to convert the existing office/storage space on the second floor of the existing building at 4009 N. Croatan Highway to an apartment per the standards of the Beach Commercial (BC-1) zoning district. A public hearing is requested to be scheduled for the August 5, 2013 Town Council meeting.

MPT Perry made a motion to set a public hearing at the town council meeting on August 5, 2013 to consider a conditional use permit application to convert the existing office storage space on the second floor of the building at 4009 North Croatan Highway to a two bedroom apartment. Councilwoman Klutz seconded the motion and it passed unanimously.

d.) Permit Fee Waiver: Request to waive permit fees for construction of a new residence to replace a residence at 1300 W. Kitty Hawk Road (corner of W. Kitty Hawk Road & Austin Cemetery Road) that was damaged during Hurricane Irene and later demolished.

Heard: After each of our recent storms the council waived permit fees for 9 months for projects related to dealing with storm damage. The time has expired and this is a request to extend it for this property.

Mayor Perry: We know it was damaged during that storm?

Heard: Yes we can confirm that for you.

MPT Perry moved to waive the permit fees associated with the construction of a new residence at 1300 West Kitty Hawk Road to replace the previous residence that was damaged during Hurricane Irene and later demolished. Councilwoman Klutz seconded and it passed unanimously.

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10. NEW BUSINESS

a.) Appointments to Town Boards and Committees

MPT Perry: There are 3 vacancies and 2 applications.

Klutz: I would like to nominate David Morton for the vacancy on the Board of Adjustment for a 3 year term that expires June 2016. MPT Perry made a second and it passed unanimously, 4-0.

Klutz: We have been trying to find a volunteer for the Recreation Committee and so far no one has responded to the recent advertisements. Mr. Morton had originally volunteered for the Recreation Committee and it looked like he was going to fill that vacancy but he seems to be an ideal candidate for the Board of Adjustment and he agreed to fill it. We are back to the drawing board with the Recreation Committee so if anybody wants to volunteer or knows somebody who would like to volunteer please call.

Bateman: He has his hand up.

Klutz: Would you like to volunteer?

Tom Heffner: Yes I will do it.

Klutz: I nominate Tom Heffner for the vacancy on the Recreation Committee to fill a term that will end in June 2014. Councilman Bateman seconded and it passed unanimously, 4-0.

MPT Perry: I am going to nominate Chuck Heath to the alternate vacancy on the planning board for a term for a two year term which expires in June 2015. Councilman Bateman seconded and it passed unanimously, 4-0.

11. REPORTS OR GENERAL COMMENTS FROM TOWN MANAGER

a.) Police Chief to Serve on NCLM Police Chief's Advisory Committee - Manager Stockton announced Chief Joel Johnson has been chosen to serve on the North Carolina League of Municipalities Police Chief's Advisory Committee. Chief Johnson is one of ten police chiefs from the State of North Carolina selected for this committee.

b.) Thank You from Outer Banks Sporting Events – Manager Stockton informed council he had received a letter of thanks from Lynda Wood, Executive Director of the Outer Banks Sporting Events. She thanked the town for its support of the recent *Storm the Beach* event. It was spearheaded by Kitty Hawk Ocean Rescue Director Cole Yeatts and lifeguards provided assistance on a voluntary basis for the set up and breakdown.

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c.) **Compliment to the Public Works Department** – Manager Stockton said he had also received a compliment from Linda Barnhart of 4412 Sea Scape Drive about the work public works personnel does around town. Mrs. Barnhart said public works was checking the right-of-way for limbs and they stopped and helped an 80 year old neighbor of hers to remove a large limb. She went on to say that aside from keeping the beach road and the bypass looking great for visitors and locals they also have a wonderful sense of community and helpfulness. Mrs. Barnhart thinks Kitty Hawk is the best community to live in.

12. REPORTS OR GENERAL COMMENTS FROM TOWN ATTORNEY

a.) **Report on Winks Arbitration Hearing** – Attorney Michael announced he, Planning Director Heard and Code Enforcement Officer Alexander will attend an arbitration hearing tomorrow concerning Winks. The hearing is before an attorney who is appointed as an arbitrator. He will hear the town and the defendant and then he will render a decision. It is not binding on anyone. If the town prevails a decision will have to be made to proceed with the hearing in district court. If they prevail the town can go ahead and proceed with the hearing in district court. It gives the parties a hearing before an experienced legal individual and gives you some idea of what to expect if you go forward with the hearing.

MPT Perry said that did not sound like what he and the mayor attended years ago in Raleigh and Rocky Mount.

Attorney Michael said they had attended mediation.

13. REPORTS OR GENERAL COMMENTS FROM TOWN COUNCIL

Thank You to Ocean Rescue - Councilman Bateman also thanked Ocean Rescue for helping during the *Storm the Beach*. Everyone appreciates the great job they did.

Pelican's Perch Comments – MPT Perry said the following are comments for a house in the surf wash with an exposed septic tank. He thought it was time bring it to the public's attention and provide some answers to questions they seem to have.

MPT Perry: Kitty Hawk councilmembers and town staff often receive questions pertaining to how a residence home standing in the active surf zone with a partially exposed septic tank and creating a potential breach in the dune line can continue to exist. The issue is complex but I will attempt to summarize the problems for a better understanding by the public.

Town staff was asked to research specific questions plus my own research is included. The very first thing that must be understood is that this council has no desire to condemn private property. That said we do understand the danger posed to the larger segment of this community and would like to find a solution.

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The most common question pertains to placement of a septic system within very close proximity to active surf. The town does not issue septic system permits. Dare County Health Department is the local permitting agency and follows State guidelines. 1) the State rules require a site to have a minimum depth of 12" of useable, naturally occurring soil with no unsuitable conditions; one of which is soil wetness. A site that meets the minimum can be filled with suitable fill material in order for it to meet the mean high water mark setback. There are setback requirements for property lines, building foundation and water lines to name a few; 2) the health department does not care where the house or condo is located. If there is enough land to have a tank, drain field, drain field repair area, meet any required setbacks from the mean high water mark and have enough elevation and soil type that it will perk, the department issues a permit; 3) the health department does not care if the septic tank is partially or fully exposed since the tank is fabricated to contain fluids and not allow external leakage; 4) the health department, following State rules, requires a minimum setback of 50' from mean high water mark for an on-site conventional wastewater disposal system; and, 5) what is mean high water mark? North Carolina seems to have generally adopted what is known as the Borax Rule which states that a mean high water mark is an average of the heights of tidal waters over a period of 18.6 years. That length of time is required for the varying distances of earth and moon from sun and each other to complete a cycle. Note: one of the frustrating things during research on this subject was the inability to determine when the last cycle was determined and how the mean high water mark is calculated between cycles.

The Coastal Area Management Act has no standards at all requiring setbacks from any tide mark for septic systems. A previous article in The Outer Banks Voice referring to 50' from low tide was incorrect; we checked. As to repetitive loss, recent rule change allows CAMA to treat a residence and its accompanying septic system as a single structure. Therefore, if damaged, the cost to repair a septic system and residence must exceed 50% of the value of the residence and the septic system.

So with all of the above limitations what would it take for a municipal entity to condemn a building. The NC Building Codes states that an unsafe building can be condemned if a building shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress or other causes such as a health and safety issue from lack of a functioning septic system. Those conditions are not present in this case.

In addition, the NC Court has determined that a municipality cannot condemn property that is considered sited on public trust areas. Those areas involve wet sand, dry sand, foreshore and other issues. As for breaching the dune line for parking access, NCDOT rules permit owner access from adjacent roadways.

As you can now understand, the only viable option for town government in this case would be for the owner to voluntarily offer to sell their property thus allowing removal and repair of beach and dune breach.

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I hope that helps illuminate some of the confusion around Pelican's Perch.

Mayor Perry: They did not change the law so it does not help us any. That is good information. Is there any public comment?

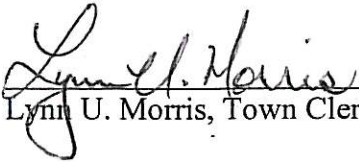
14. PUBLIC COMMENT

There were no public comments at this time.

15. ADJOURN

Councilman Bateman made a motion to adjourn and MPT Perry seconded. The motion passed unanimously, 4-0. Time was 7:38 p.m.

These minutes were approved at the *August 5, 2013* council meeting.


Lynn U. Morris, Town Clerk


Clifton G. Perry, Mayor